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# THE DISPUTE RESOLUTION REVIEW

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FOURTH EDITION

EDITOR  
RICHARD CLARK

LAW BUSINESS RESEARCH

# THE DISPUTE RESOLUTION REVIEW

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This article was first published in The Dispute Resolution Review, Fourth Edition (published in April 2012 – editor Richard Clark).

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Fourth Edition

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RICHARD CLARK

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Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
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ISBN: 978-1-907606-28-1

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: +44 870 897 3239

# ACKNOWLEDGEMENTS

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The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

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## EDITOR'S PREFACE

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*Richard Clark*

Following the success of the first three editions of this work, the fourth edition now extends to some 56 jurisdictions and we are fortunate, once again, to have the benefit of incisive views and commentary from a distinguished legal practitioner in each jurisdiction. Each chapter has been extensively updated to reflect recent events and provide a snapshot of key developments expected in 2012.

As foreshadowed in the preface to the previous editions, the fallout from the credit crunch and the ensuing new world economic order has accelerated the political will for greater international consistency, accountability and solidarity between states. Governments' increasing emphasis on national and cross-border regulation – particularly in the financial sector – has contributed to the proliferation of legislation and, while some regulators have gained more freedom through extra powers and duties, others have disappeared or had their powers limited. This in turn has sparked growth in the number of disputes as regulators and the regulated take their first steps in the new environment in which they find themselves. As is often the case, the challenge facing the practitioner is to keep abreast of the rapidly evolving legal landscape and fashion his or her practice to the needs of his or her client to ensure that he or she remains effective, competitive and highly responsive to client objectives while maintaining quality.

The challenging economic climate of the last few years has also led clients to look increasingly outside the traditional methods of settling disputes and consider more carefully whether the alternative methods outlined in each chapter in this book may offer a more economical solution. This trend is, in part, responsible for the decisions by some governments and non-governmental bodies to invest in new centres for alternative dispute resolution, particularly in emerging markets across Eastern Europe and in the Middle East and Asia.

The past year has once again seen a steady stream of work in the areas of insurance, tax, pensions and regulatory disputes. Some insolvency and employment practitioners have had busy years with the fallout from the credit crunch beginning to trickle down into the wider economy. At the time of writing, dark clouds hang over the EU in

particular as the Member States strive to save the euro from collapse and prepare for a period of uncertainty and challenging circumstances. It is too early to tell what, if any, fundamental changes will occur in the region or to the single currency, but it is clear that the current climate has the potential to change the political and legal landscape across the EU for the foreseeable future and that businesses will be more reliant on their legal advisors than ever before to provide timely, effective and high-quality legal advice to help steer them through the uncertain times ahead.

**Richard Clark**

Slaughter and May

London

March 2012

## Chapter 4

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# BAHRAIN

*Haifa Khunji, Kaashif Basit, Sharon Lakhan and Jessica Lang Roth*<sup>1</sup>

### I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

#### i Bahrain's judiciary background

Similarly to other Gulf States, Bahrain's judiciary consists of a blend of Islamic shariah,<sup>2</sup> British common law and civil law drawn principally from Egypt's civil legal tradition. Bahrain's established system of law courts goes back to the 18th century, but the form its judiciary takes today can be traced back directly to developments taking place during the 1930s, when its national courts were for the first time organised by virtue of a promulgation issued by the Advisor in 1938; and in 1966 and 1971, when Bahrain issued the Code of Criminal Procedure and the Civil Commercial Procedures Law ('the CCPA')<sup>3</sup> respectively.

As this chapter is slanted primarily for an international readership interested in Bahrain's business legal environment, it will focus on the CCPA, which covers court procedures in civil and commercial cases.

#### ii The CCPA and the judiciary

The CCPA was promulgated in 1971 and specifies the procedures for litigation before courts of civil and commercial jurisdiction. The procedures covered by the CCPA include those for bringing cases to court, hearing evidence, managing cases following hearings,

---

1 Haifa Khunji and Kaashif Basit are partners and Sharon Lakhan and Jessica Lang Roth are associates at KBH Kaanuun Limited.

2 Shariah is the moral code and religious law of Islam. It is derived from two primary sources: the precepts set forth in the Qur'ān, and the example set by the Islamic prophet Muhammad in the Sunna.

3 Hassan Ali Radhi, 'Judiciary and Arbitration in Bahrain'; *Arab and Islamic Law Series*, Volume 25, 2003.

ordering interim measures, examining cases, and calling, challenging and executing verdicts. The CCPA also contains a chapter dedicated to arbitration.

Many amendments have been made to the CCPA since its promulgation, including:

- a* Decree No. 8 of 1978, which amends some provisions, notably with relation to the procedures for the payment of debts and deposits;
- b* Decree No. 19 of 1983, which lays down new rules on summary proceedings; and
- c* Decree No. 15 of 1985, which amends the Junior Court's jurisdiction.

### **iii Structure and competence of the civil and commercial courts**

According to Article 7 of the CCPA, Bahrain's civil and commercial courts are the following:

- the High Court of Appeal;
- the High Court; and
- the courts of minor causes and courts of execution.

The courts have competence to hear all cases concerning civil and commercial matters as well as the personal status of non-Muslims.

## **II COURT PROCEDURE**

### **i Procedures and time frames**

Both claimants and defendants ideally want to be able to establish from the outset of a court case how long it will last and how much it will cost them. These questions are clearly interrelated, as lawyers' fees increase as a case evolves through different stages of litigation, particularly when a case is lost and then appealed. It is a common fact that Bahrain's courts currently lack the necessary case management procedures that are often taken for granted in other jurisdictions.<sup>4</sup>

The CCPA does however lay down some basic rules. Cases must be filed with the competent court by means of a statement of claim (Article 23), and on submission of the statement of claim the plaintiff must pay a fee as well as enclose copies of documents he or she wishes to submit to support his or her case (Article 24). A court clerk thereafter maintains a file for the case once it is submitted and delivers a copy of the statement of claim to the defendant on the day after it was submitted. The defendant then has 10 days to submit a defence accompanied by documents he or she wishes to use to support his or her defence (Article 25). Following the expiry period laid down in Article 25, the court clerk appoints a session for the case to be heard and provides both the plaintiff and the defendant with summons to attend court for the first hearing.

However, once the first hearing takes place, there is no established procedure for the management of the case. The timeline and management of a case will depend

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<sup>4</sup> In England and Wales, for example, the Civil Procedure Rules give judges wide case management powers.



on the particular circumstances of the case and the judge's discretion. There is also no coherent system of checks and balances to ensure that the parties abide by case procedural requirements. A defendant can potentially stall legal proceedings by abusing the process, for example, by failing to submit documents that may be required of him or her.<sup>5</sup> Many lawyers agree that this aspect of litigation in Bahrain is in great need of reform and that cases need to be tried within specific time frames established at the beginning of a case. This is something which already takes place within Bahrain's arbitration procedures, notably within the ambit of the BCDR. Comparative law provides the local community with examples of jurisdictions where courts have strict case management powers and where parties are induced through various coercive measures to abide by all the procedural requirements of a case, especially time frames. For this reason the local legal community expects the same kind of procedural requirements from its own court system and feels a proposal for reform is in great need of discussion to ensure that plaintiffs receive more legal certainty, as currently defendants benefit from a system where procedures relating to time can be used to delay cases for their own benefit.<sup>6</sup>

Bahrain's CCPA contains protective and interim measures for the benefit of plaintiffs. Article 176 allows court orders for the sequestration of a defendant's property if a plaintiff has serious grounds for fearing that a defendant will abscond or smuggle his or her property abroad. This type of measure is otherwise known as a 'freezing order' in common law jurisdictions. Article 177 is a security measure that should be read in conjunction with Article 176. It allows the deposit of a surety by an applicant for a freezing order in the event that the respondent suffers loss or damage as a result of a freezing order where the applicant was not correct in his or her allegations.

Of general interest to defendants residing abroad, Article 178 of the CCPA allows a court to give an order forbidding a defendant to travel out of the jurisdiction if there are serious grounds for supposing that he or she is likely to abscond and if he or she has not provided a form of surety acceptable to the court or a form of bail in cash that would guarantee the future execution of a judgment.

## **ii Class actions**

The CCPA contains provisions covering circumstances where there is a plurality of litigants. According to Article 73, the court has discretion to decide whether the fact that there is more than one plaintiff to a case causes confusion and delay and whether it may be more beneficial to conduct independent trials for each plaintiff. In theory, the court may also allow plaintiffs to file a case as one party or to defend a case in unison, otherwise known as 'class actions'.

However, in practice, class actions in the Kingdom of Bahrain are rare. The judge usually opts to conduct independent trials for each plaintiff.

---

5 In contrast to England and Wales, where the judge has the power to strike out a statement of claim if a claimant fails to abide by the procedural rules.

6 KBH Kaanuun Limited would like to thank Mr Abdul Rahman Al Thukair for providing advice for this section.

**iii Representation in proceedings**

Article 40 of the CCPA allows litigants to appear without an attorney on the date for the hearing, and litigants, whether natural or legal persons, may represent themselves throughout the development of a case.

The above does not apply to proceedings before the Court of Cassation, which require a party to be represented by an attorney.

**iv Service out of the jurisdiction**

Defendants living outside Bahrain can be served with summons outside the jurisdiction. If the court establishes that a defendant is living outside Bahrain and that he or she has no agent in Bahrain to accept delivery of summons on his or her behalf, it may order the summons to be served to him or her through diplomatic channels, by sending the writs by registered mail with an acknowledgment slip or even by e-mail.

**v Enforcement of foreign judgments and assistance to foreign courts**

Articles 252-255 of the CCPA cover the rules for the enforcement of foreign court judgments and awards.

Article 252 of the CCPA stipulates the conditions that must be satisfied in order for a foreign judgment to be enforced in the Kingdom of Bahrain. Those conditions may be summed up as follows:

- a* there must be reciprocity between the state in which the judgment was delivered and the Kingdom of Bahrain;<sup>7</sup>
- b* the foreign judgment must have been passed by a court having appropriate jurisdiction;
- c* litigants in the foreign country should have been duly summoned and properly represented;
- d* the foreign judgment must have become final according to the law of the country where it was passed;
- e* the foreign judgment should not conflict with a judgment previously passed by the Bahrain courts; and
- f* the judgment should not contain anything contrary to public order or morals in the country in which it should be enforced.

Upon ascertaining whether the above conditions are satisfied, an applicant must make a request for an order of enforcement, which must be submitted to the Civil High Court pursuant to the ordinary procedures for filing lawsuits and subject to the payment of a prescribed fee.<sup>8</sup>

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<sup>7</sup> Otherwise known as the 'equal treatment condition' or 'condition of reciprocity'. A foreign judgment will be treated in Bahrain, from the point of view of its enforceability, in the same way as a Bahraini judgment is treated in the foreign country from which the judgment in question ensues.

<sup>8</sup> Jalila Sayed Ahmed, Enforcement of Foreign Judgments in some Arab Countries – Legal Provisions and Court Precedents: Focus on Bahrain. *Arab Law Quarterly* [1999] pp169-176.

It should also be borne in mind that Bahrain ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Agreement for the Enforcement of Court Judgments among GCC States and the 1983 Riyadh Agreement for Judicial Cooperation. All contain additional rules with regards to the enforcement of foreign judgments by Bahrain courts as well as with regards to assistance to foreign courts that complement the rules contained in the CCPA.

#### **vi Litigation costs**

The courts of Bahrain have broad discretion in determining how to apportion the costs of a case. Article 192 of the CCPA gives the court power to order costs, including lawyers' fees, to be paid by a litigant losing a verdict. However, in practice lawyers' fees are borne by each party and the winning party's legal fees will not be ordered to be reimbursed by the losing party.

The courts tend to see the client–lawyer relationship as a personal one that has no financial bearing on the case. Bahraini lawyers agree this is another area in need of reform, especially considering the rise in lawyer costs associated with the increase in the commercial complexity and technicality of some legal cases.

The question of the reimbursement of legal costs by a losing party to a winning party is also one in need of serious consideration. At present the law relegates the relationship between a lawyer and his or her client to an inherently private sphere unrelated to the damages claimed in a civil or commercial case. This is despite the fact that legal fees have increased exponentially over the last decades especially for commercial cases that have become not only lengthy but also complicated and technical, thus requiring knowledge from lawyers who will charge clients a premium for their expertise. For a plaintiff this means he or she is likely to fight a legal battle and bear important legal costs that in retrospect make litigation a less cost-effective method of compensation for damages, whereas for a defendant it is an incentive to make a case drag on to the point of financial harassment or even choking of the other party. Many Bahraini lawyers agree that they urgently need a system where the lawyer representing the winning party can submit his or her fee agreement to the judge and request that the legal fees associated with having to lodge and pursue the case be borne by the losing party.<sup>9</sup>

### **III DOCUMENTS AND THE PROTECTION OF PRIVILEGE**

Part 5 of the CCPA covers the procedure for the disclosure of documentary evidence.<sup>10</sup> According to Article 140 of the CCPA, a litigant may ask his or her opponent to submit any document at his or her disposal that has a bearing on the action:

*a* if the law permits that the opponent be required to submit such document;

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9 KBH Kaanuun Limited would like to thank Mr Abdul Rahman Al Thukair for providing advice for this section.

10 Known as disclosure in the United Kingdom or discovery in the United States. The approach to disclosure in Bahrain is somewhat less invasive than in common law jurisdictions.

- b* if it is a joint document applying jointly to both parties that establishes their mutual rights and obligations; or
- c* if one of the parties has used this document as a form of support at any stage during the action.

A petition has to be drafted and submitted to the judge giving a description of the document sought, as well as its purpose and evidence that the document is actually at the disposal of the other party. The petitioner must also outline on which grounds he or she believes the document should be disclosed.

There is therefore no obligation on either party to submit a document that would undermine its own case or support the other's case. The CCPA rules on disclosure therefore contrast sharply with those found in the civil procedure rules of well-known jurisdictions such as England and Wales. For example, Part 31 of the Civil Procedure Rules of England and Wales give a party a right to inspect any document that might either benefit its case or adversely affect its counterpart's. In practice, disclosure in Bahrain is limited to documents that apply jointly to both parties and whose copy one of the parties may have lost or not have had in its possession, and that establish both parties' mutual rights and obligations.

#### **IV ALTERNATIVES TO LITIGATION<sup>11</sup>**

##### **i Overview of alternatives to litigation**

Bahrain has a strong tradition of alternative dispute resolution ('ADR'), in particular arbitration and mediation. In the early 1990s the Bahrain International Commercial Arbitration Centre and the Gulf Cooperation Council Commercial Arbitration Centre were established in Bahrain. In 2009, in response to added pressure on Bahrain's court system and the rise in commercial disputes and litigation caused by recent economic challenges, the Bahrain Chamber for Dispute Resolution, a centre designed to facilitate and encourage both statutory ADR tribunals and mediation and arbitration, was established in partnership with the American Arbitration Association ('the BCDR-AAA').

##### **ii Arbitration**

Royal Decree 30 of 2009 ('Decree 30') was the legislative instrument that established the BCDR-AAA, providing for both statutory ('Jurisdiction under the Law') arbitration and arbitration by agreement ('Jurisdiction by Agreement') to be conducted under the auspices of the BCDR-AAA.

In accordance with Article 9 of Decree 30, the Jurisdiction under the Law of the BCDR-AAA is for cases where the value of the claim exceeds 500,000 dinars and involves:

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11 KBH Kaanuun would like to thank Latifa Salahuddin for providing advice for this section.

- a* disputes among financial institutions licensed according to the provisions of the Law of the Central Bank of Bahrain or between these institutions and other institutions, companies or individuals; or
- b* international commercial disputes. The dispute shall be deemed international if the location of one of the disputant parties or the place where a substantial part of the obligations of the commercial relationship is to be performed, or the location most closely connected with the dispute, is outside the Kingdom.

Decree 30 thus provides that claims conforming to (a) or (b) above, which would otherwise have been within the jurisdiction of the courts of Bahrain, are required to be, and will be, referred to the BCDR-AAA. Article 15 of Decree 30 provides that an award rendered in a Jurisdiction under the Law case is to be considered as a 'final judgment issued by the courts of Bahrain'.

The applicable rules for Jurisdiction under the Law matters are contained in Resolution No. (65) for the Year 2009 ('Jurisdiction under the Law Rules'). Pursuant to these Rules, non-Bahraini lawyers may represent parties to arbitration proceedings, but only if they work jointly with a Bahraini lawyer who is licensed to appear before the Cassation Court. The default language will be Arabic, and the default laws will be the governing laws of Bahrain.

One motivation for the creation of this statutory arbitration regime was to remove some of the caseload from an already congested local court system and to provide a specialist forum for handling international or financial disputes (or both) of a value greater than 500,000 dinar. As such, the Jurisdiction under the Law Rules are reflective of the procedural rules of the courts of Bahrain, as opposed to the usual rules common to arbitration centres around the world.

Enforcement of these 'statutory' arbitrations outside of Bahrain may prove to be difficult in circumstances where the parties have not agreed to arbitrate any dispute (an agreement to arbitrate being a requirement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

Article 19 of the Decree creates a free arbitration zone ('FAZ') whereby parties can agree in writing to have disputes referred to the BCDR, regardless of the value or subject of the claim, or whether the dispute is international in nature (Jurisdiction by Agreement).

Non-Bahraini lawyers are entitled to represent parties and conduct any necessary actions in FAZ arbitration proceedings without being required to work jointly with a Bahraini lawyer.

The BCDR-AAA Arbitration Rules ('FAZ Arbitration Rules') are the default rules that apply where parties have agreed to have disputes referred to the BCDR without designating particular rules (as distinct from the rules that apply to the statutory arbitration proceedings). The parties may, however, adopt, in writing, modifications to the FAZ Arbitration Rules. The FAZ Arbitration Rules are based largely upon the International Centre for Dispute Resolution Rules, and allow the parties to nominate the applicable law and language of the proceedings. For Section 2 arbitrations, where the parties have failed to agree on the relevant language and laws, the Tribunal shall determine the most applicable law.

There are significant differences between the procedural rules applicable for statutory arbitrations and FAZ arbitrations. Most particularly, Section 1 arbitrations fall

within the supervision of the Supreme Judicial Council, and the laws of Bahrain are the governing laws. The purpose for establishing the BCDR as a centre to hear and determine these Section 1 disputes was to free up the time of the courts, and to ensure the swift resolution of these specific types of cases. As such, the Section 1 Rules are reflective of the procedural rules of the courts of Bahrain.

Arbitration has in the past been a reasonably common method of dispute resolution in Bahrain; however, there has also been reluctance in the past to arbitrate in Bahrain arising out of concerns that the courts of Bahrain would not uphold arbitral awards.<sup>12</sup>

The establishment of the BCDR-AAA and its provisions for recognising awards will no doubt allay some of those insecurities.

Given the mandatory aspects of Jurisdiction under the Law arbitrations, there will likely be a significant number of cases that will fall within the scope of Section 1 of Decree 30 and the automatic jurisdiction of the BCDR-AAA. Additionally, it is likely that the BCDR-AAA will see an increasing volume of FAZ arbitration proceedings, although naturally the Centre will need to establish a satisfactory track record to attract potential users.

Although only operational since early 2010, the BCDR-AAA has already handled 27 cases, 13 of which were filed in the BCDR-AAA's first year of operation, and 14 in 2011. It is to be expected that the number of cases filed annually will grow, particularly as prospective parties become aware of the benefits of the BCDR-AAA as a FAZ.

### *Available rights of appeal*

Technically, there is no right of appeal from an arbitral award rendered through the BCDR-AAA – Article 15 of Decree 30 provides that an arbitral award is a final judgment issued by the courts of Bahrain. Despite this, Article 13 of the Decree provides for limited circumstances in which a party may challenge the arbitral award issued by the Tribunal, seeking nullification in the Cassation Court. These circumstances are set out in Articles 13(1) to (8), and include the following situations:

- a* where there was a failure to properly serve notice of the appointment of a member of the Tribunal or the dispute resolution procedures, or the respondent was not allowed to present a defence (Article 13(1));
- b* the composition of the Tribunal or the dispute resolution procedure is contrary to what is stipulated in the regulation (Article 13(2));
- c* the award contradicts the public order of the Kingdom of Bahrain (Article 13(3));
- d* there is an act of deception or fraud by a party or its representative that influences the award (Article 13(4));
- e* if, after the issue of the award, it is admitted or adjudicated that papers on which the award is based were forged, or if it is determined that a witness gave false testimony (Article 13(5));

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12 John M Townsend. "The New Bahrain Arbitration Law and the Bahrain "Free Arbitration Zone"; *Dispute Resolution Journal*, February/April 2010, p76.

- f* if a party obtains decisive papers in the case after the issue of the award that were obstructed by the opposing party (Article 13(6));
- g* if the Tribunal ruled on an issue not claimed by a party or ruled for more than had been claimed (this may, however, lead only to the nullification of those rulings, and not the entire award) (Article 13(7)); or
- h* if the award contradicts another award having *res judicata* status (Article 13(8)).

Article 14 of Decree 30 provides that a challenge on the above grounds must be made within 30 days of the date of issue of the award (or the date of its notification to the parties). In the circumstances set out in Article 13(4) to (6) (that is, where there has been a finding of some misconduct by a party after the issue of the award), the challenge must be filed within 30 days of the day on which the misconduct is discovered.

Additionally, pursuant to Article 24 of Decree 30, a party may challenge an order of the High Court of Appeal for the enforcement of an award for the following reasons:

- a* there is no valid arbitration agreement, due to the incapacity of one of the parties or the arbitration agreement contravening provisions of the applicable law chosen by the parties (Article 24(a)(1));
- b* there have been procedural irregularities (Article 24(a)(2));
- c* the composition of the Tribunal or the procedures are contrary to what was stipulated in the arbitration agreement (Article 24(a)(3));
- d* the award ruled on matters not contained in the scope of the arbitration agreement or not put forward by a party (although only those rulings will be held to be set aside, not the entire award); or
- e* the award contradicts public order in the Kingdom of Bahrain.

### *Enforcement of foreign arbitral awards in Bahrain*

Bahrain has been a signatory of the New York Convention since 1998. Provided that the conditions of the New York Convention are met, a foreign arbitral award from a country that is also a signatory to the New York Convention may be enforced through the courts of Bahrain, without further review of the merits. The courts of Bahrain, will, however, take into consideration whether the dispute is one that is arbitrable under Bahraini law, whether the award is final and binding on both parties and whether the award is contrary to public policy in Bahrain.

### **iii Mediation**

The BCDR-AAA also has provision for the conduct of mediations, and the applicable rules are the BCDR-AAA Mediation Rules. These are the default laws applicable in the event that parties to a dispute falling under the auspices of the BCDR-AAA have not nominated the particular rules to be followed.

Formal processes of mediation are not at all common in Bahrain and, prior to the promulgation of Decree 30, the only legislation referring to mediation related to labour disputes. However, historically, and especially given its island geography, a percentage of the Bahraini population was either farmers or traders trading most frequently with countries such as India, Egypt and other Far Eastern countries and Europe. When disputes arose in the course of such trading, the most vital form of settling matters was negotiation.

As such, the principles of negotiation and informal mediation have long been familiar to Bahrainis. This historic predisposition to negotiation may well expand into a widespread usage of the formal mediation rules established through the BCDR-AAA.

Mediation is increasingly seen in Bahrain as a unique opportunity to resolve disputes quickly and effectively, without the need for parties to resort to lengthy and complicated litigation in the courts of Bahrain. As such, the BCDR-AAA has been actively promoting the use of mediation through a number of training sessions, in the belief that such training will, in the words of the Chief Registrar and Assistant Chief Executive for Mediation at the BCDR-AAA:

*... not only identify a pool of accredited mediators from the group, but also to create a forum of qualified professionals who are willing to participate in future training and workshops. They will also be natural ambassadors as we seek to increase understanding of the benefits of ADR and further Bahrain's status as a financial and commercial hub within the region.*<sup>13</sup>

Whether or not formal mediation becomes a widespread means of dispute resolution in Bahrain remains to be seen.

## V OUTLOOK AND CONCLUSIONS

As with other countries in the region, Bahrain is striving to develop a reputation as a regional hub for commerce and finance. An important factor in attracting international business to the country involves having in place effective means for dispute resolution that are both cost-effective and timely. It is widely considered, however, that current court procedures are not ideal and would benefit from reform. In particular, as highlighted above, there is a lack of effective case management once a first hearing has been held, and no system for ensuring that parties comply with timelines.

There is also a need for reform of the regulation of the conduct of Bahraini advocates. The Advocacy Act provides for some regulation of the conduct of advocates; however, there is significant scope for expansion of the duties of advocates. In particular, despite a historically strong international focus, there are aspects of legal practice in Bahrain that do not match international standards. For example, there is currently no requirement for Bahraini advocates to undertake anti-money laundering checks when onboarding new clients. This is severely out of step with the efforts and expectations of the wider international community, and is a particularly glaring failing considering Bahrain's self-promotion as a financial hub.

It is suggested that more stringent regulation of the Bahraini legal profession will have the effect of improving the stature of Bahraini advocates and the Bahraini legal system in the international community.

Through the establishment of the BCDR-AAA Bahrain has addressed, in particular, the issue of delay in litigation proceedings, and provided for world-first statute mandated arbitrations for certain domestic cases, and a free arbitration zone

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13 Press release issued by the BCDR on 12 June 2011, available at [www.bcdr-aaa.org/en/news/press-release-bcdr-aaa-identifies-mediation-experts-in-bahrain.html](http://www.bcdr-aaa.org/en/news/press-release-bcdr-aaa-identifies-mediation-experts-in-bahrain.html).



for international disputes. This unique approach will likely be attractive, particularly to financial corporations considering doing, or already doing, business in Bahrain. International financial institutions may well be encouraged to know that significant value disputes will be heard under the auspices of the BCDR-AAA in a more timely fashion than would otherwise be the case in litigation through the courts. Moreover, the judges presiding as arbitrators over Jurisdiction under the Law cases are specially trained by the BCDR and equipped to handle financial and international disputes, thus creating a specialist body for disputes of this nature.

It remains to be seen whether the statutory arbitrations will significantly reduce the caseload before the courts of Bahrain, and it depends largely on whether a significant enough number of cases fall within the criteria of Decree 30 for automatic referral to arbitration.

The innovative developments through the establishment of the BCDR, if coupled with reforms of court procedures and the legal profession, will no doubt serve to make Bahrain a very attractive option for international business and a forum of choice for alternative dispute resolution.

## Appendix 1

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### ABOUT THE AUTHORS

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Haifa Khunji is a UK graduate and a dual-qualified attorney in Bahrain and Kuwait with over 10 years' experience in corporate finance and banking. She trained and worked with three City firms in the region for seven years and prior to this worked for four years as in-house counsel for a multinational company in the UAE. She joined KBH Kannuun as a partner at its inception and manages the Bahrain operation.

Haifa is particularly involved in corporate finance and banking. She specialises in banking and financial transactions and her experience includes advising on secured and unsecured finance transactions, mergers and acquisitions and corporate restructuring.

#### **KAASHIF BASIT**

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Kaashif Basit has a broad-based contentious and non-contentious practice with particular focus on the media, financial services and real estate sectors. He has strong commercial and DFSA-centred regulatory focus with a range of US, Far Eastern, subcontinent, European and UAE financial institutions and insurance companies as clients.

Mr Basit particularly specialises in commercial dispute resolution, international commercial arbitration, ADR and insolvency. He has particular expertise in relation to southern Asia and has advised a number of Indian blue chip corporations as well as acting for multinational – particularly UAE – companies doing business in India. The litigation and arbitration practice has covered issues as diverse as explosions at petrochemical plants, oil production-sharing contracts, aircraft leases, insurance coverage cross-border partnerships, joint venture and shareholder (including institutional and offshore investor) matters. He has been involved in a number of the early litigation and arbitration cases in the DIFC, including undertaking the advocacy on behalf of the appellant in the first ever appeal before the DIFC Court of Appeal. Mr Basit also advises and manages cases in conjunction with UAE advocates, particularly property-related matters, in the UAE courts. He has represented parties in regulatory investigations by the DFSA, as well as the restructuring of regulated and non-regulated entities in the DIFC.

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